FILED
APR 9 1982
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. RAYMOND EDWARD JAMES, Defendant-Appellant.	)	No. 81-1772 DC# CR 78-223-1-RCB Oregon (Portland)
UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. RAYMOND EDWARD JAMES, Defendant-Appellant.	)	No. 81-1802 DC# CR 78-223-1-JMB Oregon (Portland) ORDER

Before: WRIGHT and SCHROEDER, Circuit Judges

The Court observes that appellant's Rule 35 motion was denied on July 7, 1981 and that appellant did not file a motion to take a late appeal until September 28, 1981. The district court therefore lacked authority to extend the time for filing an appeal. See Pettibone v. Cupp, 666 F.2d 333 (9th Cir. 1982).

This Court's order of February 24, 1982, consolidating these appeals, is vacated. Case number 81-1772 is dismissed for lack of jurisdiction. Fed. R. App. P. 4(a). Case number 81-1802 will be decided in due course.

CR CAL 4/5/82

APPENDIX "A"

U.S. DISTRICT COURT
DISTRICT OF OREGON
FILED
DEC 10 1981
ROBERT M. CHRIST, CLERK
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	CRIMINAL NO. 78-223
RAYMOND EDWARD JAMES, Defendant,	)	NOTICE OF APPEAL

Defendant Raymond Edward James hereby appeals to the Court of Appeals for the Ninth Circuit from the Order denying his Motion for Modification of Sentence entered herein on July 7, 1981.

DATED: December 10, 1981.

ROBERT M. CHRIST, CLERK

by Iris K. Reilly

Deputy Clerk

APPENDIX "B"

for the crime (RT 243-244, 247, 292, 295; G. Ex. 15, 15 A, 15 B, 15 C, 16, 16 A, 17-23, 23 A, 23 B, 23 C, 23 D, 24-27).

III.

DEFENDANT'S MOTION FOR REDUCTION OF SENTENCE WAS PROPERLY DENIED. (CASE NO. 81-1772)

On January 19, 1981, defendant filed a motion for reduction of sentence pursuant to Rule 35, Federal Rules Criminal Procedure (CR 162; D.Br. No. 81-1772, p. 2). On July 7, 1981, the motion was denied by the Honorable Robert C. Belloni (CR 165; D.Br. No. 81-1772, p. 2).[7/8/]

It is settled that a motion for reduction of sentence rests with the sound discretion of the trial Court and is, in effect, a plea for mercy. Accordingly, the reviewing courts will not substitute their judgment for that of the Court below. United States v. Kohlberg, 472 F.2d 1189, 1190 (9th Cir. 1973); United States v. Smith, 650 F.2d 206, 209 (9th Cir. 1981); United States v. Maynard, 485 F.2d 247, 248 (9th Cir. 1973); United States v. Hallinan, 103 F.Supp. 800, 801 (N.D. Cal. 1952).

Denial of the motion in the present case was entirely appropriate. See the Presentence Investigation Report in the underlying criminal case

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7/ During the pendency of James' direct appeal from his underlying conviction, Judge Skopil, who presided during the trial, was named to the Court of Appeals for this Circuit (D.Br. No. 81-1772, p. 2). As a consequence, the motion for reduction was assigned to Judge Belloni who had heard certain of the pretrial matters and had served as the trier of fact in the case of James' co-defendant Roy Wickham (CR 164). See footnote 2 (supra).

8/ Although James' notice of appeal from the denial of his motion was not timely filed, Chief Judge James M. Burns found he had not received notification of Judge Belloni's July 7, 1981, order and thus authorized late filing of the notice (CR 171; D.Br. No. 81-1772, pgs. 2-3). The Government does not contest the Court's findings.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
516 UNITED STATES COURTHOUSE
620 S. W. MAIN
(S. W. BROADWAY & MAIN)
PORTLAND, OREGON 97205

ROBERT M. CHRIST
CLERK
DONALD M. CINNAMOND
CHIEF DEPUTY

(503) 221-2202
FTS 423-2202

September 30, 1981

Mr. Neil W. Imus
Clerks Division
Administrative Office of
the United States Courts
Washington, D. C. 20544

Dear Mr. Imus:

Re: USA v. Raymond Edward James;
No. CR 78-223

I am responding to your request for information concerning the statements made by Mr. James in his letter dated September 22, 1981, addressed to Mr. Roger D. Foley. I assume that Mr. James intended to direct his letter to Mr. William E. Foley, Director of the Administrative Office.

I have enclosed a photocopy of the original order in question, signed by Judge Belloni on July 7, 1981 and entered on the docket of the case that day. You will note that the handwritten symbol "ntfd" appears next to the file stamp. In accordance with our long standing office procedure, the person who receives a signed order from a judge, generally this is an incourt deputy, assumes the responsibility of notifying the parties of the entry of the order. This is commonly done by making a sufficient number of photocopies of the order and mailing a copy to each attorney or party appearing in propria persona in the case. When the mailing is completed, that deputy makes the notation in the manner it appears on this order.

I personally discussed this situation with the deputy who made the notation here. She has no independent recollection of the actual mailing of the copies in this instance, however, she has been employed as a deputy clerk in this office for over 10 years, and she has followed this notification procedure

APPENDIX "D"

on countless occasions. After sincere reflection, she can think of nothing that was unique about this order. Nothing comes to her mind that would have caused deviation from the usual practice.

You inquired about the absence of a notation on the docket sheet showing the mailing of a notice of entry or copy of the order. It has not been our practice to make such notations on docket sheets in criminal cases.

Based on my review of this entire situation, I can only conclude that our regular procedure was followed. I can give you no explanation for Mr. James' failure to receive the copy.

Very truly yours,

ROBERT M. CHRIST, CLERK

RMC:laa

Enclosure

APPENDIX "D"

U. S. DISTRICT COURT
DISTRICT OF OREGON
FILED
JUL 7 1981
ROBERT M. CHRISTI, CLERK
BY dal DEPUTY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,	)	
	)	
vs.	)	CRIMINAL NO. 78-223
	)	
RAYMOND EDWARD JAMES,	)	ORDER
	)	
Defendant.	)	

Defendant's Motion for Modification of Sentence is denied. The sentence which defendant received was and continues to be an appropriate one.

DATED: July 7, 1981.

United States District Judge

APPENDIX "D"

ORDER

CERTIFICATE OF SERVICE

Raymond Edward James, petitioner hereinbefore, hereby certifies that he did cause to be placed in the United States mails at Butner, North Carolina, postage prepaid, one copy of the foregoing application, addressed to:

Solicitor General
Department of Justice
Washington, DC 20530

Done this 3rd day of May, 1982.

Raymond Edward James

RAYMOND EDWARD JAMES
Petitioner, Pro Se